



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 24 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jason Chise
OTR Performance, Inc.
51619 Industrial Dr.
Macomb, MI 48042

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Chise:

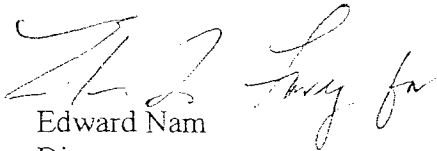
The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to OTR Performance, Inc. (OTR) for violating Section 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and (B). As summarized in the attached FOV, EPA determined that OTR removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has manufactured, installed, sold or offered to sell parts or components for motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Cody Yarbrough. You may call him at (312) 886-9137 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Nam", followed by a flourish.

Edward Nam
Director
Air and Radiation Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

OTR Performance, Inc.
Macomb, Michigan

Proceedings Pursuant to
The Clean Air Act,
42 U.S.C. §§ 7401-7671q

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FINDING OF VIOLATION

EPA-5-18-MI-11

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to OTR Performance, Inc. ("OTR" or "you") for violating Sections 203(a)(3)(A) and (B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and (B).

Statutory and Regulatory Background

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that "the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
2. Section 216(2) of the CAA defines "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway." *see also* 40 C.F.R. § 85.1703 (further defining "motor vehicle"). These definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use (e.g., claim that a vehicle is used solely for competition).
3. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, including Heavy Duty Diesel Engine (HDDE) motor vehicles, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86. HDDE emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology." CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling a new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The certificate of conformity will include, among other things, a description of the HDDEs,

their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. HDDE motor vehicle and HDDE manufacturers employ many devices and elements of design to meet emission standards. "Element of design" means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.
6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, HDDE motor vehicle and HDDE manufacturers may utilize control devices or elements of design such as Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), Diesel Oxidation Catalyst (DOC) and/or Selective Catalytic Reduction (SCR) systems.
7. HDDE motor vehicle and HDDE manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) ("[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x...").
8. Modern HDDE motor vehicles are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DPF, EGR, DOC, and SCR systems and the engine fueling strategy.
9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), the EPA promulgated regulations for motor vehicles manufactured after 2007 that require HDDE motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.
10. Section 203(a)(3)(A) of the CAA prohibits "any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."
11. Section 203(a)(3)(B) of the CAA prohibits "any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of

the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

Background

12. OTR is a HDDE motor vehicle aftermarket parts installer, supplier, and manufacturer located in Waterford, Michigan.
13. OTR is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. On April 23, 2018, EPA issued to OTR a request for information under Section 208 of the CAA, 42 U.S.C. § 7542, requesting information related to OTR’s production, sale, distribution, and installation of HDDE motor vehicle and HDDE parts or components between January 1, 2016 and April 23, 2018.
15. On June 15, 2018, OTR responded to EPA’s request for information. In the response, OTR provided invoices, receipts, service records, product descriptions, advertising locations, and a sales summary showing that the company manufactured, sold, and/or installed at least 5,040 parts or components where a principal effect of each part or component is to disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in HDDE motor vehicles in compliance with Title II of the CAA. More specifically, OTR manufactured, sold, and offered for sale parts and components that removed, disconnected, bypassed or disabled the engine fueling strategy, DPFs, EGRs, DOC, SCR, and/or OBD systems, and/or tampered with the emissions-related elements of the ECM.
16. On its website, OTR offered for sale “Performance Modules,” that it advertised as having the ability to bypass, delete, and/or clear active fault codes related to the DPF, DOC, EGR, and/or SCR systems on HDDE motor vehicles. OTR advertised each of these modules with a disclaimer that the product “is capable of disabling emissions equipment.” In addition, for certain products, OTR recommended having “the SCR/DPF System bypassed” when installing the product. These products are listed below.

Product No.	Product Name	Engine	Model Years
OTR100	EGR Performance Module D12 03-07 VL100	Volvo VED12 EPA04	2003 - 2007
OTR111	EGR Performance Module ISX CM870 03-07 CU111	Cummins ISX CM870 EPA04	2003 - 2007
OTR111M	EGR Performance Module ISM CM 870 / 875 03-07 CU111M	Cummins ISM CM870 EPA04	2003 - 2007
OTR300	EGR Performance Module D16 05-07 VL300	Volvo VED16 EPA04	2004 - 2007
OTR325	EGR Performance Module Aset AC 04-07 MK325	Mack AC360 EPA04 Mack AC400 EPA04 Mack AC427 EPA04 Mack AC460 EPA04	2004 - 2007
OTR400	DPF Performance Module X 08-10 D11 D13 D16 MP7 MP8 MP10 VM400	Volvo VED11 EPA 07 Volvo VED13 EPA07 Volvo VED16 EPA07 Mack MP7 EPA07 Mack MP8 EPA07 Mack MP10 EPA07	2008-2010
OTR401	DPF Performance Module X 08-10 DD EPA07 VM401	Detroit Diesel DD13 EPA07 Detroit Diesel DD15 EPA07	2008-2010
OTR404	DPF Performance Module X 08-10 MP7 MRU LEU MK404	Mack MP7 EPA07	2008-2010
OTR450	EGR Performance Module X 08-10 D11 D13 D16 MP7 MP8 MP10 VM450	Volvo VED11 EPA 07 Volvo VED13 EPA07 Volvo VED16 EPA07 Mack MP7 EPA07 Mack MP8 EPA07 Mack MP10 EPA07	2008-2010
OTR600	SCR Performance Module Evo 11-13 D11 D13 D16 MP7 MP8 MP10 VM600	Volvo VED11 EPA10 Volvo VED13 EPA10 Volvo VED16 EPA10 Mack MP7 EPA10 Mack MP8 EPA10 Mack MP10 EPA10	2011-2013
OTR601	SCR Performance Module Evo 11-13 DD EPA10 DD601	Detroit Diesel DD13 EPA10 Detroit Diesel DD15 EPA10	2011-2013

Product No.	Product Name	Engine	Model Years
OTR602	SCR Performance Module Evo 11-13 MX13 PC602	Paccar MX13 EPA10	2011-2013
OTR603	SCR Performance Module Evo 11-13 Hino	Hino J08E-VC EPA10	2011-2013
OTR650	EGR Performance Module Evo 11-13 D11 D13 D16 MP7 MP8 MP10 VM650	Volvo VED11 EPA10 Volvo VED13 EPA10 Volvo VED16 EPA10 Mack MP7 EPA10 Mack MP8 EPA10 Mack MP10 EPA10	2011-2013
OTR700	SCR Performance Module Evo2 14-18 D11 D13 D16 MP7 MP8 MP10 VM700	Volvo VED11 EPA14 Volvo VED13 EPA14 Volvo VED16 EPA14 Volvo VED11 EPA16 Volvo VED13 EPA16 Mack MP7 EPA14 Mack MP8 EPA14 Mack MP10 EPA14 Mack MP7 EPA16 Mack MP8 EPA16	2014-2018
OTR701	SCR Performance Module Evo2 14-16 DD GHG14 DD701	Detroit Diesel DD13 EPA14 Detroit Diesel DD15 EPA14	2014-2016
OTR702	SCR Performance Module Evo 14-18 MX13 PC702	Paccar MX13 EPA14	2014-2016
OTR703	SCR Performance Module Evo 14-16 Hino	Hino J08E-VC EPA14	2014-2016
OTR750	EGR Performance Module Evo2 14-18 D11 D13 D16 MP7 MP8 MP10 VM750	Volvo VED11 EPA14 Volvo VED13 EPA14 Volvo VED16 EPA14 Volvo VED11 EPA16 Volvo VED13 EPA16 Mack MP7 EPA14 Mack MP8 EPA14 Mack MP10 EPA14 Mack MP7 EPA16 Mack MP8 EPA16	2014-2018
OTR900	SCR Performance Module CE Tier 4I H-Engine CE900	Volvo D9H Tier4I	2011-2015

17. On its website, OTR offered for sale “Performance Programmers,” and advertised these products as having the ability to alter fuel injection timing on HDDE motor vehicles. These products are listed below.

Product No.	Product Name	Engine	Model Years
OTR112	HP+ Performance Programmer ISX	Cummins ISX CM870 EPA04	2004 - 2007
OTR124	HP+ Performance Programmer TQ Plus	Volvo VED12 EPA04 Volvo VED16 EPA04 Volvo VED11 EPA 07 Volvo VED13 EPA07 Volvo VED16 EPA07 Volvo VED11 EPA10 Volvo VED13 EPA10 Volvo VED16 EPA10 Volvo VED11 EPA14 Volvo VED13 EPA14 Volvo VED16 EPA14 Mack MP7 EPA14 Mack MP8 EPA14 Mack MP10 EPA14	2004 - 2017
OTR125	HP+ Performance Programmer EVO2	Mack MP7 EPA14 Mack MP8 EPA14 Mack MP10 EPA14	2014-2016

18. The parts and/or components manufactured, installed, sold and/or offered for sale by OTR are intended for “motor vehicles” as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2).
19. OTR knew or should have known that the parts and/or components that it manufactured, sold and offered for sale were being used by its customers to bypass, defeat or render inoperative the emission controls on motor vehicles certified under the CAA.

Alleged Violations

20. OTR knowingly removed and/or rendered inoperative the engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and tampering with the emissions-related elements of the ECM installed on at least 44 HDDE motor vehicles, in violation of Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).
21. OTR manufactured, sold, offered to sell, and/or installed at least 5,040 parts and/or components where a principal effect of the part or component was to bypass, defeat or

render inoperative the engine fueling strategy, DPF, EGR, DOC, SCR, and/or OBD systems and/or tampered with the elements of design on HDDE motor vehicles, in violation Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Environmental Impact of Violations

22. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma.

Enforcement Authority

23. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Any person who violates Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), is subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

9/24/18

Edward Nam

Director

Air and Radiation Division



CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-18-MI-11, by Certified Mail, Return Receipt Requested, to:

Jason Chise
OTR Performance, Inc.
51619 Industrial Dr.
Macomb, MI 48042

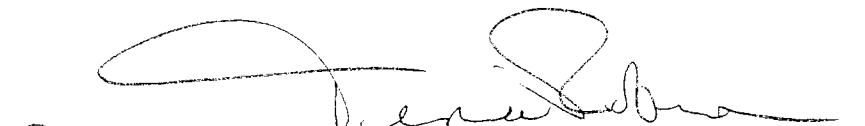
I also certify that I sent a Finding of Violation, by e-mail to:

Jenine Camilleri
Enforcement Unit Supervisor
Air Quality Division
Michigan Department of Environmental Quality
CamilleriJ@michigan.gov

Joyce Zhu (Acting District Supervisor)
Southeast Michigan District Office
Michigan Department of Environmental Quality
Zhuj@michigan.gov

Zachary Fayne, Associate
Arnold & Porter
zachary.fayne@arnoldporter.com

On the 27 day of August 2018.


Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70170530 000062892396